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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 481

JAMES J. LAUGHLIN,

Petitioner,

vs.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF ON BEHALF OF PETITIONER

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The opposition filed by the United States in this case relies upon the authority of *Ex Parte Savin*, 131 U. S. 267. In that case this Court stated:

> "We are of the opinion that within the meaning of the statute, the Court, at least when in session, is present in every part of the place set apart for its own use, and for the use of its officers, jurors and witnesses; and misbehavior anywhere in such places is misbehavior in the presence of the Court."

It could well be that if this Court had not announced its decision in the case of *Nye* v. *United States*, 313 U. S. 33, the acts charged against the petitioner may have been

within the rule of the *Savin* case. It should be pointed out again that two allegations were made against the petitioner:

1. Certain motions were filed to summon witnesses, and the charge was made that the motions were not filed in good faith.

2. An Affidavit of Bias and Prejudice was filed against the presiding Judge, Hon. Edward C. Eicher.

With respect to the motions, since the sedition trial was never proceeded to a conclusion, no one can say that the motions were not filed in good faith. With respect to the Affidavit of Bias and Prejudice, it must be borne in mind that the affidavit was executed by the client, Robert Noble, and the petitioner merely certified that same was filed in good faith. The Affidavit of Bias and Prejudice, therefore, raises an interesting and serious question. It is true that the allegations contained in the Affidavit of Bias and Prejudice are rather startling. However, no one in this country can say beyond contradiction that the allegations are untrue. There was testimony offered at the trial of petitioner to the effect that the late President Roosevelt had inspired the indictments in the sedition case and that he was very anxious to bring about a conviction. Witnesses testified to the effect that there was a deal between the late President Roosevelt and the late Judge Eicher. Certainly no one can say beyond any question of a doubt that this was not so. We cannot close our eyes to the fact that many things have happened in this country in the past ten years to weaken the confidence of the public insofar as certain members of the judiciary are concerned. We dislike to believe that any Judge of a Court of the United States will not live up to the exaltant requirements of his office. Nevertheless we know from the cruel facts before

us that certain members of the judiciary have been sent to the penitentiary, certain others have been admitted to hospitals for the insane, and certain others are under criminal indictments.

Very early in the sedition trial it became apparent that something was wrong. When a group of attorneys join together as they did in the sedition case and accuse the trial judge of bias and prejudice, and suggest politely to him that he withdraw, then we have a very unusual situation. That is exactly what happened in the sedition case. The record of this Court shows that a motion for disqualification of Chief Justice Eicher was filed, and said motion reads as follows:

"MOTION FOR DISQUALIFICATION OF CHIEF JUSTICE EICHER

"Now come the undersigned attorneys representing defendants opposite their names and petition the Honorable Edward C. Eicher presiding herein to enter an order disqualifying himself from further proceeding in this case. This motion is based upon the common law grounds requiring absolute impartiality in the trial judge and the motion is also by virtue of Sections 24 and 25, Title 28, U. S. Code (Section 20, Judicial Code). This motion is filed after the most careful consideration and deliberation and after consultation of the attorneys with each other and all attorneys signing this motion have expressed their sentiments in accordance with the motion after having observed the conduct of Chief Justice Eicher since these proceedings opened on Monday, April 17, 1944.

"Wherefore, the undersigned, officers of this Court state that in their deliberate and considered judgment the ends of justice require that Chief Justice Eicher forthwith disqualify himself, proceed no further herein and assign said cause to another judge.

"In so stating we point to the fact that since the filing of this indictment the record in this case clearly shows that the conduct of Chief Justice Eicher has specifically shown bias and prejudice against the

defense and in favor of the prosecution, has grossly restricted the scope of the attorneys in their representation of their clients, has made arbitrary rulings without support in law and in other ways has violated the constitutional safeguards of each of said defendants.

"Personal bias and prejudice being thus shown and having existed since the date of the filing of the indictment down to the date of the filing of this motion as set forth in Section 20 of the Judicial Code, we respectfully submit this motion should be carefully considered by Chief Justice Eicher and that upon consideration that the same be granted."

And this motion was signed by the following attorneys, and the majority of the said attorneys were court-appointed:

"Albert W. Dilling, Attorney for Elizabeth Dilling;

"James J. Laughlin, Attorney for Smythe and Noble;

"J. Austin Latimer, Attorney for James True and George E. Deatherage;

"Maximilian St. George, Attorney for Joseph E. McWilliams;

"Ira Chase Koehne, Attorney for Broenstrupp, Elmhurst, Washburn and Clark;

"William J. Powers, Attorney for William Dudley Pelley;

"Elizabeth R. Young, Attorney for Charles B. Hudson;

"Frank H. Myers, Attorney for William R. Lyman, Jr.;

"Ethelbert B. Frey, Attorney for Robert Edwards Edmundson;

"Ode L. Rankin, Attorney for Elizabeth Dilling;

"W. Hobart Little, Attorney for David Baxter;

"E. Hilton Jackson, Attorney for Gerald B. Winrod;

"George Seifkin, Attorney for Gerald B. Winrod;

"John W. Jackson, Attorney for Gerald B. Winrod;

"Henry H. Klein, Attorney for Eugene Nelson Sanctuary;

"Marvin F. Bischoff, Attorney for J. Garner."

It is doubtful whether there has been any case in the history of the administration of justice in the District of Columbia or in any Federal Court throughout the United States where a great body of attorneys expressed their disapproval of the presiding judge as was done in this case. Therefore, having that in mind and it being the view of all these attorneys that it was impossible to obtain a fair trial before Chief Justice Eicher, then the Affidavit of Bias and Prejudice, the subject matter of the present proceding, is not far removed.

The recent case of Irwin Steingut, Petitioner, v. Daniel F. Imrie, a Justice of the Supreme Court of the State of New York, has some application here. That case was decided by the Appellate Division of the Supreme Court, Third Department, on November 14, 1945.

In the *Steingut* case, Justice Heffernan stated:

> "The uncontradicted evidence is that appellant was confronted not with legal proof but merely with hearsay statements, insinuations and conclusions of the prosecutor.
>
> "Apparently appellant was convicted not because of any violation of the Judiciary Law but for a violation of some rule of public policy. Again quoting from the opinion of the court below the learned justice said: 'The application of such a rule of public policy makes it relatively unimportant whether or not there is before me sound proof of the correctness of the items or totals of the figures of disbursements'. * * *
>
> "He could not be compelled to explain something which he did not concede to be true, or which was not established clearly by competent evidence. Otherwise, there would be cast upon him a burden of proof concerning a disputed matter, a burden which no defendant in a criminal inquiry is obliged to assume."

That seems to have considerable application in this case. The contention is made that the Affidavit of Bias and Prejudice was not filed in good faith. The petitioner contended throughout that it was filed in good faith. Therefore the words of Justice Heffernan:

> "He could not be compelled to explain something which he did not concede to be true, or which was not established clearly by competent evidence. Otherwise, there would be cast upon him a burden of proof concerning a disputed matter, a burden which no defendant in a criminal inquiry is obliged to assume."

And further in the opinion of Justice Heffernan we find this:

> "In my opinion appellant has been adjudged guilty of criminal contempt and sentenced to prison and also fined not because he violated any law of the land but because he failed 'to successfully attack the credibility' of a report based on hearsay, conjecture and rumor. A citizen should not be deprived of his liberty or his property on such unwarranted accusations unsupported as they are by legal proof of guilt. To permit such a judgment to stand would be a gross injustice to appellant and a grave reflection on our system of jurisprudence."

In the case before us, who can say that we will not, in the not too distant future, obtain all the facts and circumstances as to the late President Roosevelt's handling of the affairs of state. If the judgment of the Court below is permitted to stand on the meager evidence now in the record and it later develops that there was an arrangement between the late President Roosevelt and the late Judge Eicher to bring about a conviction of the defendants in the sedition case, then there would truly be a grave miscarriage of justice. It should never be forgotten that the Affidavit of Bias and Prejudice was signed by the defend-

ant Robert Noble and not by the petitioner. In fact, the petitioner has contended throughout that he believed it to be his duty to certify to the Affidavit of Bias and Prejudice and the cases, in the view of petitioner, do not hold that petitioner is vouching for the truth of the allegations contained in the Affidavit of Bias and Prejudice, but is merely certifying to the good faith of the defendant in executing said affidavit.

In view of what has been stated we believe the questions are serious and important, and that the Court of Appeals has not given proper effect to the ruling of this Court in the *Nye* case, and the opinion of the Court of Appeals is in direct conflict with the opinion of the Sixth Circuit in the case of *Schmidt* v. *United States*, 124 F. 2d 177, and therefore the petition for writ of certiorari should be granted.

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